IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

WP(C).No. 5410 of 2004(R)

PETITIONER:

KARAKKUNNEL IBRAHIM,
S/O.MOHAMMED,
KOORACHUNDU, ATHIYODI.P.O.,
KOZHIKODE DISTRICT.

BY ADV. SRI.P.K.SURESH KUMAR
SRI.K.P.SUDHEER

RESPONDENTS:

KOORACHUNDU GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY,
KOORACHUNDU.P.O.,
KOZHIKODE DISTRICT.

ADDL.R2 IMPLEADED.

2. JOSEPH KONGOLA, AGED 49 YEARS,
S/O.THOMAS, KONGOLA HOUSE,
ATHIYODI.P.O VIA. KOORACHUNDU,
KOZHIKODE DISTRICT 673 527.

ADDL. R2 IMPLEADED AS PER ORDER DT. 9.3.04 IN IA. 3234/2004.

BY ADV. SRI.T.G.RAJENDRAN
SRI.JACOB ABRAHAM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/07/2007, THE COURT ON THE SAMNE DAY DELIVERED THE FOLLOWING:

W.P.(C)NO.5410/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE REPORT DT. 6.1.04 SUBMITTED BY THE ADVOCATE COMMISSIONER BEFORE THE MUNSIFF'S COURT, PERAMBRA.

EXT.P1(a) :- COPY OF THE PLAN SUBMITTED BY THE ADVOCATE COMMISSIONER BEFORE THE MUNSIFF'S COURT, PERAMBRA.

RESPONDENTS EXHIBITS

EXT.R2(1):- COPY OF THE APPLICATION LAND RELINQUISHMENT DT. 23.3.99.

EXT.R2(2):- COPY OF THE JUDGMENT IN OS. NO.64/99 OF THE MUNSIFF MAGISTRATE OF PERAMBRA DT. 16.10.01.

/TRUE COPY/

P.S. TO JUDGE

tss

THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).No. 5410 OF 2004-R

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Dated this the 17th day of July, 2007.

JUDGMENT

This writ petition, pending with no interim orders, is filed seeking a direction to the first respondent Panchayat to refrain from using any part of the petitioner's property as shown by him in Ext.P1 sketch, for the purpose of constructing a road. The impleaded additional respondent has placed on record Ext.R2(1) whereby the petitioner is shown to have executed an application for relinquishment under the Kerala Land Relinquishment Act and the Rules framed thereunder. He has also placed on record Ext.R2(2), a judgment dismissing a suit for default. There is no reply affidavit refuting the contentions in the counter-affidavit of the additional second respondent that the petitioner had in

fact relinquished his right over the parcel of land covered by Ext.R2(1).

It is, however, argued by the learned counsel for the petitioner relying on the provisions of the Kerala Land Relinquishment Act and the Rules framed thereunder that even assuming that Ext.R2(1) evidences an application for relinquishment, the relevant law provides that such relinquishment is a matter that would depend upon the acceptance of such relinquishment on behalf of the State and still further, that relinquishment in terms of the provisions of the Kerala Land Relinquishment Act and the Rules framed thereunder could be had only in favour of the State and not to a Panchayat. In terms of the law, it is correct to say that relinquishment by a private citizen, of land held by him under the Kerala Land Relinquishment Act and the Rules framed thereunder can be only in favour of the State. But then, the land having shown to be made subject of an application for relinquishment made in 1999, which fact is not disputed, it

would not, thereafter, be for the petitioner to say that rights have to be asserted by the Government and not by the Panchayat, particularly when he seeks adjudication of his private rights, if at all any, in writ proceedings. In so far as ends of justice are concerned, the petitioner, who has demonstrated to have made application for relinquishment of right over land, cannot continue to make out a grievance against the user of the land. Under such circumstances, I do not find any justifiable ground to issue any direction as sought for, in exercise of writ jurisdiction.

In the result, the writ petition fails. The same is accordingly dismissed. No costs.

Sd/-

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-